

HOUSE BILL No. 1268

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-1-9; IC 10-13-3; IC 35-38-1-7.1.

Synopsis: Bias motivated crimes. Provides that a bias motivated crime is a crime in which the person who commits the crime knowingly or intentionally selects: (1) an individual against whom the crime was committed; or (2) any property damaged or otherwise affected by the crime; in whole or in part because of the actual or perceived race, color, religion, ethnicity, national origin, sexual orientation, gender, gender identity or expression, or disability of the individual or a group of individuals, whether or not the person's belief or perception was correct. Requires law enforcement officers to receive training in identifying, responding to, and reporting bias motivated crimes. Amends the law that requires law enforcement agencies to collect and report information concerning bias motivated crimes. Makes it an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for a crime if the crime is a bias motivated crime.

Effective: July 1, 2016.

Truitt, Kirchhofer, Porter, Klinker

January 11, 2016, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1268

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-1-9, AS AMENDED BY P.L.117-2015,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 9. (a) The board shall adopt in accordance with
4 IC 4-22-2 all necessary rules to carry out the provisions of this chapter.
5 The rules, which shall be adopted only after necessary and proper
6 investigation and inquiry by the board, shall include the establishment
7 of the following:
8 (1) Minimum standards of physical, educational, mental, and
9 moral fitness which shall govern the acceptance of any person for
10 training by any law enforcement training school or academy
11 meeting or exceeding the minimum standards established
12 pursuant to this chapter.
13 (2) Minimum standards for law enforcement training schools
14 administered by towns, cities, counties, law enforcement training
15 centers, agencies, or departments of the state.
16 (3) Minimum standards for courses of study, attendance
17 requirements, equipment, and facilities for approved town, city,



county, and state law enforcement officer, police reserve officer, and conservation reserve officer training schools.

(4) Minimum standards for a course of study on cultural diversity awareness, including training on the Unlawful Immigrant and Visa Awareness Act of 2000 (P.L. 106-386) that must be required for each person accepted for training at a law enforcement training school or academy. Cultural diversity awareness study must include an understanding of cultural issues related to race, religion, gender, age, domestic violence, national origin, and physical and mental disabilities.

(5) Minimum qualifications for instructors at approved law enforcement training schools.

(6) Minimum basic training requirements which law enforcement officers appointed to probationary terms shall complete before being eligible for continued or permanent employment.

(7) Minimum basic training requirements which law enforcement officers appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment.

(8) Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order to be eligible for continued employment.

(9) Minimum basic training requirements for each person accepted for training at a law enforcement training school or academy that include six (6) hours of training in interacting with:

(A) persons with autism, mental illness, addictive disorders, intellectual disabilities, and developmental disabilities;

(B) missing endangered adults (as defined in IC 12-7-2-131.3); and

(C) persons with Alzheimer's disease or related senile dementia;

to be provided by persons approved by the secretary of family and social services and the board. The training must include an overview of the crisis intervention teams.

(10) Minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for inservice training programs for law enforcement officers. The course must cover the following topics:

(A) Examination of the human and sexual trafficking laws (IC 35-42-3.5).



- 1 (B) Identification of human and sexual trafficking.
- 2 (C) Communicating with traumatized persons.
- 3 (D) Therapeutically appropriate investigative techniques.
- 4 (E) Collaboration with federal law enforcement officials.
- 5 (F) Rights of and protections afforded to victims.
- 6 (G) Providing documentation that satisfies the Declaration of
- 7 Law Enforcement Officer for Victim of Trafficking in Persons
- 8 (Form I-914, Supplement B) requirements established under
- 9 federal law.
- 10 (H) The availability of community resources to assist human
- 11 and sexual trafficking victims.
- 12 (b) A law enforcement officer appointed after July 5, 1972, and
- 13 before July 1, 1993, may not enforce the laws or ordinances of the state
- 14 or any political subdivision unless the officer has, within one (1) year
- 15 from the date of appointment, successfully completed the minimum
- 16 basic training requirements established under this chapter by the board.
- 17 If a person fails to successfully complete the basic training
- 18 requirements within one (1) year from the date of employment, the
- 19 officer may not perform any of the duties of a law enforcement officer
- 20 involving control or direction of members of the public or exercising
- 21 the power of arrest until the officer has successfully completed the
- 22 training requirements. This subsection does not apply to any law
- 23 enforcement officer appointed before July 6, 1972, or after June 30,
- 24 1993.
- 25 (c) Military leave or other authorized leave of absence from law
- 26 enforcement duty during the first year of employment after July 6,
- 27 1972, shall toll the running of the first year, which shall be calculated
- 28 by the aggregate of the time before and after the leave, for the purposes
- 29 of this chapter.
- 30 (d) Except as provided in subsections (e), (l), (r), and (s), a law
- 31 enforcement officer appointed to a law enforcement department or
- 32 agency after June 30, 1993, may not:
- 33 (1) make an arrest;
- 34 (2) conduct a search or a seizure of a person or property; or
- 35 (3) carry a firearm;
- 36 unless the law enforcement officer successfully completes, at a board
- 37 certified law enforcement academy or at a law enforcement training
- 38 center under section 10.5 or 15.2 of this chapter, the basic training
- 39 requirements established by the board under this chapter.
- 40 (e) This subsection does not apply to:
- 41 (1) a gaming agent employed as a law enforcement officer by the
- 42 Indiana gaming commission; or



1 (2) an:

2 (A) attorney; or

3 (B) investigator;

4 designated by the securities commissioner as a police officer of
5 the state under IC 23-19-6-1(k).

6 Before a law enforcement officer appointed after June 30, 1993,
7 completes the basic training requirements, the law enforcement officer
8 may exercise the police powers described in subsection (d) if the
9 officer successfully completes the pre-basic course established in
10 subsection (f). Successful completion of the pre-basic course authorizes
11 a law enforcement officer to exercise the police powers described in
12 subsection (d) for one (1) year after the date the law enforcement
13 officer is appointed.

14 (f) The board shall adopt rules under IC 4-22-2 to establish a
15 pre-basic course for the purpose of training:

16 (1) law enforcement officers;

17 (2) police reserve officers (as described in IC 36-8-3-20); and

18 (3) conservation reserve officers (as described in IC 14-9-8-27);

19 regarding the subjects of arrest, search and seizure, the lawful use of
20 force, interacting with individuals with autism, and the operation of an
21 emergency vehicle. The pre-basic course must be offered on a periodic
22 basis throughout the year at regional sites statewide. The pre-basic
23 course must consist of at least forty (40) hours of course work. The
24 board may prepare the classroom part of the pre-basic course using
25 available technology in conjunction with live instruction. The board
26 shall provide the course material, the instructors, and the facilities at
27 the regional sites throughout the state that are used for the pre-basic
28 course. In addition, the board may certify pre-basic courses that may be
29 conducted by other public or private training entities, including
30 postsecondary educational institutions.

31 (g) The board shall adopt rules under IC 4-22-2 to establish a
32 mandatory inservice training program for police officers and police
33 reserve officers (as described in IC 36-8-3-20). After June 30, 1993, a
34 law enforcement officer who has satisfactorily completed basic training
35 and has been appointed to a law enforcement department or agency on
36 either a full-time or part-time basis is not eligible for continued
37 employment unless the officer satisfactorily completes the mandatory
38 inservice training requirements established by rules adopted by the
39 board. Inservice training must include training in interacting with
40 persons with mental illness, addictive disorders, intellectual
41 disabilities, autism, developmental disabilities, and Alzheimer's disease
42 or related senile dementia, to be provided by persons approved by the



1 secretary of family and social services and the board, and training
 2 concerning human and sexual trafficking and high risk missing persons
 3 (as defined in IC 5-2-17-1). The board may approve courses offered by
 4 other public or private training entities, including postsecondary
 5 educational institutions, as necessary in order to ensure the availability
 6 of an adequate number of inservice training programs. The board may
 7 waive an officer's inservice training requirements if the board
 8 determines that the officer's reason for lacking the required amount of
 9 inservice training hours is due to either of the following:

10 (1) An emergency situation.

11 (2) The unavailability of courses.

12 (h) The board shall also adopt rules establishing a town marshal
 13 basic training program, subject to the following:

14 (1) The program must require fewer hours of instruction and class
 15 attendance and fewer courses of study than are required for the
 16 mandated basic training program.

17 (2) Certain parts of the course materials may be studied by a
 18 candidate at the candidate's home in order to fulfill requirements
 19 of the program.

20 (3) Law enforcement officers successfully completing the
 21 requirements of the program are eligible for appointment only in
 22 towns employing the town marshal system (IC 36-5-7) and having
 23 not more than one (1) marshal and two (2) deputies.

24 (4) The limitation imposed by subdivision (3) does not apply to an
 25 officer who has successfully completed the mandated basic
 26 training program.

27 (5) The time limitations imposed by subsections (b) and (c) for
 28 completing the training are also applicable to the town marshal
 29 basic training program.

30 (6) The program must require training in interacting with
 31 individuals with autism.

32 (i) The board shall adopt rules under IC 4-22-2 to establish an
 33 executive training program. The executive training program must
 34 include training in the following areas:

35 (1) Liability.

36 (2) Media relations.

37 (3) Accounting and administration.

38 (4) Discipline.

39 (5) Department policy making.

40 (6) Lawful use of force.

41 (7) Department programs.

42 (8) Emergency vehicle operation.



(9) Cultural diversity.

(j) A police chief shall apply for admission to the executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the executive training program within six (6) months of the date the police chief initially takes office. However, if space in the executive training program is not available at a time that will allow completion of the executive training program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available executive training program that is offered after the police chief initially takes office.

(k) A police chief who fails to comply with subsection (j) may not continue to serve as the police chief until completion of the executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city;
- (2) the police chief of any town having a metropolitan police department; and
- (3) the chief of a consolidated law enforcement department established under IC 36-3-1-5.1.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the executive training program.

(l) A fire investigator in the division of fire and building safety appointed after December 31, 1993, is required to comply with the basic training standards established under this chapter.

(m) The board shall adopt rules under IC 4-22-2 to establish a program to certify handgun safety courses, including courses offered in the private sector, that meet standards approved by the board for training probation officers in handgun safety as required by IC 11-13-1-3.5(3).

(n) The board shall adopt rules under IC 4-22-2 to establish a refresher course for an officer who:

- (1) is hired by an Indiana law enforcement department or agency as a law enforcement officer;
- (2) has not been employed as a law enforcement officer for at least two (2) years and less than six (6) years before the officer is hired under subdivision (1) due to the officer's resignation or retirement; and
- (3) completed at any time a basic training course certified by the board before the officer is hired under subdivision (1).

(o) The board shall adopt rules under IC 4-22-2 to establish a



- 1 refresher course for an officer who:
 - 2 (1) is hired by an Indiana law enforcement department or agency
 - 3 as a law enforcement officer;
 - 4 (2) has not been employed as a law enforcement officer for at
 - 5 least six (6) years and less than ten (10) years before the officer
 - 6 is hired under subdivision (1) due to the officer's resignation or
 - 7 retirement;
 - 8 (3) is hired under subdivision (1) in an upper level policymaking
 - 9 position; and
 - 10 (4) completed at any time a basic training course certified by the
 - 11 board before the officer is hired under subdivision (1).
- 12 A refresher course established under this subsection may not exceed
- 13 one hundred twenty (120) hours of course work. All credit hours
- 14 received for successfully completing the police chief executive training
- 15 program under subsection (i) shall be applied toward the refresher
- 16 course credit hour requirements.
- 17 (p) Subject to subsection (q), an officer to whom subsection (n) or
 - 18 (o) applies must successfully complete the refresher course described
 - 19 in subsection (n) or (o) not later than six (6) months after the officer's
 - 20 date of hire, or the officer loses the officer's powers of:
 - 21 (1) arrest;
 - 22 (2) search; and
 - 23 (3) seizure.
- 24 (q) A law enforcement officer who has worked as a law enforcement
 - 25 officer for less than twenty-five (25) years before being hired under
 - 26 subsection (n)(1) or (o)(1) is not eligible to attend the refresher course
 - 27 described in subsection (n) or (o) and must repeat the full basic training
 - 28 course to regain law enforcement powers. However, a law enforcement
 - 29 officer who has worked as a law enforcement officer for at least
 - 30 twenty-five (25) years before being hired under subsection (n)(1) or
 - 31 (o)(1) and who otherwise satisfies the requirements of subsection (n)
 - 32 or (o) is not required to repeat the full basic training course to regain
 - 33 law enforcement power but shall attend the refresher course described
 - 34 in subsection (n) or (o) and the pre-basic training course established
 - 35 under subsection (f).
- 36 (r) This subsection applies only to a gaming agent employed as a
 - 37 law enforcement officer by the Indiana gaming commission. A gaming
 - 38 agent appointed after June 30, 2005, may exercise the police powers
 - 39 described in subsection (d) if:
 - 40 (1) the agent successfully completes the pre-basic course
 - 41 established in subsection (f); and
 - 42 (2) the agent successfully completes any other training courses



established by the Indiana gaming commission in conjunction with the board.

(s) This subsection applies only to a securities enforcement officer designated as a law enforcement officer by the securities commissioner. A securities enforcement officer may exercise the police powers described in subsection (d) if:

- (1) the securities enforcement officer successfully completes the pre-basic course established in subsection (f); and
- (2) the securities enforcement officer successfully completes any other training courses established by the securities commissioner in conjunction with the board.

(t) As used in this section, "upper level policymaking position" refers to the following:

- (1) If the authorized size of the department or town marshal system is not more than ten (10) members, the term refers to the position held by the police chief or town marshal.
- (2) If the authorized size of the department or town marshal system is more than ten (10) members but less than fifty-one (51) members, the term refers to:

- (A) the position held by the police chief or town marshal; and
- (B) each position held by the members of the police department or town marshal system in the next rank and pay grade immediately below the police chief or town marshal.

- (3) If the authorized size of the department or town marshal system is more than fifty (50) members, the term refers to:

- (A) the position held by the police chief or town marshal; and
- (B) each position held by the members of the police department or town marshal system in the next two (2) ranks and pay grades immediately below the police chief or town marshal.

(u) This subsection applies only to a correctional police officer employed by the department of correction. A correctional police officer may exercise the police powers described in subsection (d) if:

- (1) the officer successfully completes the pre-basic course described in subsection (f); and
- (2) the officer successfully completes any other training courses established by the department of correction in conjunction with the board.

(v) This subsection applies to the following:

- (1) The minimum basic training program required under subsection (d).**
- (2) The mandatory inservice training program required under**



subsection (g).

(3) The town marshal basic training program required under subsection (h).

(4) The police chief executive training program required under subsection (j).

(5) Any other training program for which the board adopts standards.

After December 31, 2016, the standards adopted by the board for each program described in this subsection must include requirements for mandatory training in identifying, responding to, and reporting bias motivated crimes (as defined in IC 10-13-3-1).

SECTION 2. IC 10-13-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. As used in this chapter, "bias ~~motivated~~ crime" means ~~an offense a~~ **crime** in which the person who commits the ~~offense crime~~ knowingly or intentionally

(1) ~~selected the person who was injured; or~~

(2) ~~damaged or otherwise affected property;~~

~~by the offense because of the color, creed, disability, national origin, race, religion, or sexual orientation of the injured person or of the owner or occupant of the affected property or because the injured person or owner or occupant of the affected property was associated with any other recognizable group or affiliation. selects:~~

(1) **the individual against whom the crime was committed; or**

(2) **any property damaged or otherwise affected by the crime; in whole or in part because of the actual or perceived race, color, religion, ethnicity, national origin, sexual orientation, gender, gender identity or expression, or disability of the individual or a group of individuals, whether or not the person's belief or perception was correct.**

SECTION 3. IC 10-13-3-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 38. (a) ~~A~~ **Each** law enforcement agency shall collect information concerning bias **motivated** crimes.

(b) At least two (2) times each year, ~~a~~ **each** law enforcement agency shall submit information collected under subsection (a) to the Indiana central repository for criminal history information. Information shall be reported in the manner and form prescribed by the department.

(c) **Each law enforcement agency shall submit data regarding the commission of bias motivated crimes to the Federal Bureau of Investigation in accordance with guidelines established under 28 U.S.C. 534.**

~~(c)~~ (d) At least one (1) time each year, the Indiana central repository



for criminal history information shall submit a report that includes a compilation of information obtained under subsection (b) to each law enforcement agency and to the legislative council. A report submitted to a law enforcement agency and the legislative council under this subsection may not contain the name of a person who:

- (1) committed or allegedly committed a bias **motivated** crime; or
- (2) was the victim or the alleged victim of a bias **motivated** crime.

A report submitted to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

~~(d)~~ **(e)** Except as provided in subsection ~~(e)~~; **(f)**, information collected, submitted, and reported under this section must be consistent with guidelines established for the acquisition, preservation, and exchange of identification records and information by:

- (1) the Attorney General of the United States; or
- (2) the Federal Bureau of Investigation;

under 28 U.S.C. 534 and the Hate Crime Statistics Act, as amended (28 U.S.C. 534 note).

~~(e)~~ **(f)** Information submitted under subsection (b) and reports issued under subsection ~~(e)~~ **(d)** shall, in conformity with guidelines prescribed by the department,

~~(1) be separated in reports on the basis of whether it is an alleged crime, a charged crime, or a crime for which a conviction has been obtained. and~~

~~(2) be divided in reports on the basis of whether, in the opinion of the reporting individual and the data collectors, bias was the primary motivation for the crime or only incidental to the crime.~~

SECTION 4. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2015, SECTION 261, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an offense was:

(A) significant; and

(B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:



- 1 (A) committed a crime of violence (IC 35-50-1-2); and
- 2 (B) knowingly committed the offense in the presence or within
- 3 hearing of an individual who:
- 4 (i) was less than eighteen (18) years of age at the time the
- 5 person committed the offense; and
- 6 (ii) is not the victim of the offense.
- 7 (5) The person violated a protective order issued against the
- 8 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 9 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 10 order issued against the person under IC 34-26-6, or a no contact
- 11 order issued against the person.
- 12 (6) The person has recently violated the conditions of any
- 13 probation, parole, pardon, community corrections placement, or
- 14 pretrial release granted to the person.
- 15 (7) The victim of the offense was:
- 16 (A) a person with a disability (as defined in IC 27-7-6-12), and
- 17 the defendant knew or should have known that the victim was
- 18 a person with a disability; or
- 19 (B) mentally or physically infirm.
- 20 (8) The person was in a position having care, custody, or control
- 21 of the victim of the offense.
- 22 (9) The injury to or death of the victim of the offense was the
- 23 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 24 (10) The person threatened to harm the victim of the offense or a
- 25 witness if the victim or witness told anyone about the offense.
- 26 (11) The person:
- 27 (A) committed trafficking with an inmate under
- 28 IC 35-44.1-3-5; and
- 29 (B) is an employee of the penal facility.
- 30 **(12) The person knowingly or intentionally selected:**
- 31 **(A) the individual against whom the crime was committed;**
- 32 **or**
- 33 **(B) any property damaged or otherwise affected by the**
- 34 **crime;**
- 35 **in whole or in part because of the actual or perceived race,**
- 36 **color, religion, ethnicity, national origin, sexual orientation,**
- 37 **gender, gender identity or expression, or disability of the**
- 38 **individual or a group of individuals, whether or not the**
- 39 **person's belief or perception was correct.**
- 40 (b) The court may consider the following factors as mitigating
- 41 circumstances or as favoring suspending the sentence and imposing
- 42 probation:



(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person:

(A) requested emergency medical assistance; or

(B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.

(13) The person has posttraumatic stress disorder, traumatic brain injury, or a postconcussive brain injury.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or



- 1 mitigating circumstances.
- 2 (e) If a court suspends a sentence and orders probation for a person
- 3 described in subsection (b)(13), the court may require the person to
- 4 receive treatment for the person's injuries.

